REMARKS

The Examiner is requiring restriction to one of the following Groups:

I. The instances wherein Y is carbon and R^2–R^5 represent non-heterocylic groups;

II. The instances wherein Y is carbon and R^2–R^5 is a heterocycle;

III. The instances wherein Y is nitrogen and R^2–R^5 represent non-heterocylic groups;

IV. The instances wherein Y is nitrogen and R^2–R^5 is a heterocycle;

V. Claim 5, drawn to multiple processes; and

VI. Claim 8, drawn to multiple uses.

Applicants have elected Group I: The instances wherein Y is carbon and R^2–R^5 represent non-heterocylic groups, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Office if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Office to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Office has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has classified Groups I-IV as distinct (unrelated) inventions, drawn to distinct compounds. Patentable distinctness may be shown if different groups are not disclosed as capable of use together, and have different modes of operation, different functions or different effects. (M.P.E.P § 806.04; M.P.E.P § 808.01). According to the Examiner, the compounds of Groups I-IV are distinct because they are independent, capable

of being utilized alone, not in combination with other compounds listed in the Markush groups of the claims.

However, the Examiner's assertion is not evidence that the groups are unrelated, since the claims clearly show the compounds of formula (I) are capable of use together, and have similar functions and effects, e.g., as active ingredients in pharmaceutical compositions for treating and preventing the same types of diseases and disorders, as recited in claims 8 and 10.

The Examiner has categorized the relationships between Groups I-IV and VI as product and process of use. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process of using the product as claimed can be practiced with another materially different product or (B) that the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). The Examiner asserts that the products as claimed can be used in materially different processes, as evidenced by the claims and specification.

The Examiner's assertion, however, is not evidence that the process of using the products can be practiced with another materially different or that the products can be used in materially different process. In particular, as evidenced by the claims, the products are clearly practiced in the same manufacturing process and used in the same process of using the products, e.g., as evidenced by claims 8-11. The Examiner has not specifically indicated anywhere in the claims or the present specification that the shows otherwise.

The Examiner has categorized the relationships between Groups I-IV and V as a process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different

process (M.P.E.P. § 806.05(f)). The Examiner asserts that the products can be made by a materially different process, as evidenced by the claims and specification.

The Examiner, however, does not meet the requirements of M.P.E.P. § 806.05(f), since the mere assertion is not evidence of a materially different process. In particular, the Examiner has not shown anywhere in the claims and present specification where the compounds are made by a materially different process. As evidenced by the examples in the specification, the compounds are made in a very "similar manner" (see also claim 5, which recites the process for making the compounds).

Accordingly, for at least the reasons presented above, Applicants submit that the Examiner has failed to meet the burden necessary to sustain the restriction requirement. Withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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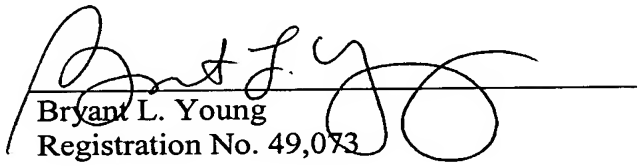

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